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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,975	04/25/2001	Gholam A. Peyman	41697	5337

1609 7590 05/23/2003

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
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WASHINGTON,, DC 20036

EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

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DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/840,975

Applicant(s)

PEYMAN, GHOLAM A.

Examiner

Roy D. Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 20-25 is/are allowed.
- 6) ☐ Claim(s) 1-5 and 13 is/are rejected.
- 7) ☐ Claim(s) 6-12 and 14-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Entry of Amendment

Applicants amendment filed on Mar. 19, 2003, as Paper No. 6, is acknowledged.
Claims 1-25 are currently pending.

Prior Rejections or Objections

The following comments pertain to the rejections or objections in the most recent Office action, Paper No. 5, mailed on Nov. 19, 2002. All rejections are withdrawn, however, new grounds of rejection are presented below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless—

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Abels et al. (6,491,715). Abels et al. disclose a system comprising:
an energy emitting device in the form of a laser diode (40) emitting at a wavelength of 805 nm, adapted to heat cells to a desired temperature; and
a material delivery device (syringe and needle) that delivers intravenously a fluid including 1-10 mg/kg (overlapping the range of 0.4-1.4 mg/kg) of ICG to the cells to be

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heated which inherently alters a physical characteristic of the cells (the peak activation absorption of ICG is 795-810 nm and col. 5, line 64-col. 6, line 48).

Allowable Subject Matter

Claims 20-25 are allowed.

Claims 6-12 and 14-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reichel et al. in a March 1994 article entitled, "ICG Dye-Enhanced Laser Photocoagulation of Poorly Defined Subfoveal Choroidal Neovascularization", disclose a laser diode treating the CNVM after ICG injections, but to a temperature that produces coagulation. The examiner has assumed that protein denaturation occurs at about 46 °C, and that photocoagulation would occur above this temperature.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 703-308-3520. The examiner can normally be reached on M-F, 7:30 am-4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 703-308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.


Roy D. Gibson
Primary Examiner
Art Unit 3739

May 21, 2003